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EAST TIMOR'S RIGHT TO SELFDETERMINATION UNDER INTERNATIONAL LAW

The Indonesian government claims that its military invasion and subsequent occupation of East Timor are justified under international law. Its arguments have not been accepted by the international community or by the United Nations General Assembly. In 1981 the General Assembly reaffirmed that the people of East Timor have yet to exercise their right to self-determination and independence in accordance with the Declaration on the granting of independence to colonial countries and peoples (Resolution 1514, XV, of December 14th 1960).

Originally, Indonesia dismissed the United Nations' Security Council's request that it withdraw its forces by claiming that the personnel involved were 'volunteers' and not Indonesian soldiers. It has since been proved that all the invading troops belonged to the Indonesian Armed Forces. Under international law, the Indonesian Government is undeniably responsible for the invasion.

Subsequently, the Indonesian Government invoked several recognised principles to justify its integration of East Timor: namely, the claims of political dependence, consanguinity, contiguity and unity (of the island of Timor). These claims have not been substantiated before any international forum: the balance of evidence, moreover, clearly favours the claims of those who, on behalf of the people of East Timor, argue that the culture, language and racial make-up of the people of East Timor are distinct from those of Indonesia, and that East Timor has been politically separate from West Timor for several centuries, and was never dependent politically upon the pre-colonial empires of Indonesia. (Note verbale dated August 11 1981 from the Permanent Representative of Cape Verde to the United Nations addressed to the Secretary General: General Assembly, 36th Session, Item 93 of the provisional agenda, A/36/150, Question of East Timor. Also: Sentence and proceedings of the Permanent People's Tribunal, Session on East Timor, Lisbon, 19-21 June 1981.]

The Indonesian authorities further asserted that their intervention was necessary to restore "peace and security to the region, to enable the people of East Timor to exercise their right to self-determination in a free and orderly manner" (Indonesian Department of Foreign Affairs, March 1977: Decolonisation of East Timor, p.39). Orderly government and peace had in fact been restored in East Timor after the civil war of mid-1975, and were dis-rupted primarily by Indonesian border incursions. Even had this not been the case, however, Indonesia's actions would have been illegal because contemp-orary international law prohibits armed intervention by a foreign government in a civil war.

In fact, any Indonesian claim to East Timor is ruled out by the Indonesian Government's own actions and statements prior to 1975. At independence, Indonesia invoked the principle of uti possidetis, which asserts that the frontiers of new ex-colonial states should correspond to former colonial frontiers, to claim rights over the entire territory of the Netherlands East Indies. It follows, however, that, having made this claim, Indonesia cannot make any claim to territories which had been previously assigned to Portugal under the Treaty of Lisbon (April 20, 1859), the Hague Convention (October 1st

1904) and the Hague Award (April 3rd 1913).

And, indeed, the Indonesian Government clearly confirmed on several occasions subsequently that it made no such claims: for example at the 1954 General Assembly of the United Nations (debate of the 1st Committee), at the plenary meeting of the 15th and 17th Sessions of the General Assembly, and, most recently, on June 17th 1974,when the Indonesian Foreign Minister confirmed in writing that Indonesia laid no claim to East Timor and recognised the right of the people of East Timor to self-determination.

Today, after the invasion, Indonesia claims that an act of self-determination has occurred, on the basis of which East Timor has been incorporated as an Indonesian province. This "act" was a resolution adopted by a "Representative People's Assembly", later presented to the Indonesian Government as a petition for integration. The Assembly was not elected by universal adult suffrage: the Indonesian Government claims that most members were selected by "concensus and consent", in violation of Principle IX of General Assembly Resolution 1541 (XV) which defines the conditions for a genuine and legitimate expression of will to integrate with another country. Furthermore, the selection of the Assembly members and the conduct of the meeting were not properly observed by independent witnesses, and the "act" itself took place while fierce fighting continued in Dili. Representatives of the United Nations refused to attend.

It is, furthermore, impossible to dispute that the Indonesian invasion constituted an act of aggression under Article 1, paragraph 1 of the United Nations Charter, as defined in General Assembly Resolution 3314, 29 UN GAOR 1 Supp. (No. 31) 142, UN Doc. A/9631 (1974). There are also very good grounds for asserting that the people of East Timor reject annexation. For the last seven years the population has resisted Indonesian government and continues to do so in the face of the most severe military repression. Moreover, after the collapse of the Portuguese colonial administration, in the brief period leading up to the Indonesian invasion, a nationalist government established order and administered the territory with the support of the great majority of the local population. The only political party which, before December 1975, advocated integration with Indonesia never received the support of more than a tiny proportion of East Timorese people.

From all these arguments, it is clear that Indonesia cannot claim that its occupation of East Timor is legitimate in law or that the people of East Timor have exercised their right to self-determination according to the terms of the United Nations Charter. This is the view of the Timorese people themselves. It has clearly been the position of the United Nations since 1975. It is the position of the Portuguese Government, which is constitutionally committed to completing the decolonisation of East Timor, and is recognised by the United Nations to be the existing government of the territory. It has also been the position of a number of governments that are by no means hostile to Indonesia, such as the Government of the United Kingdom, which has stated clearly that it does not regard the Indonesian invasion as legitimate, nor consider that the people of East Timor have exercised their right to self-determination.